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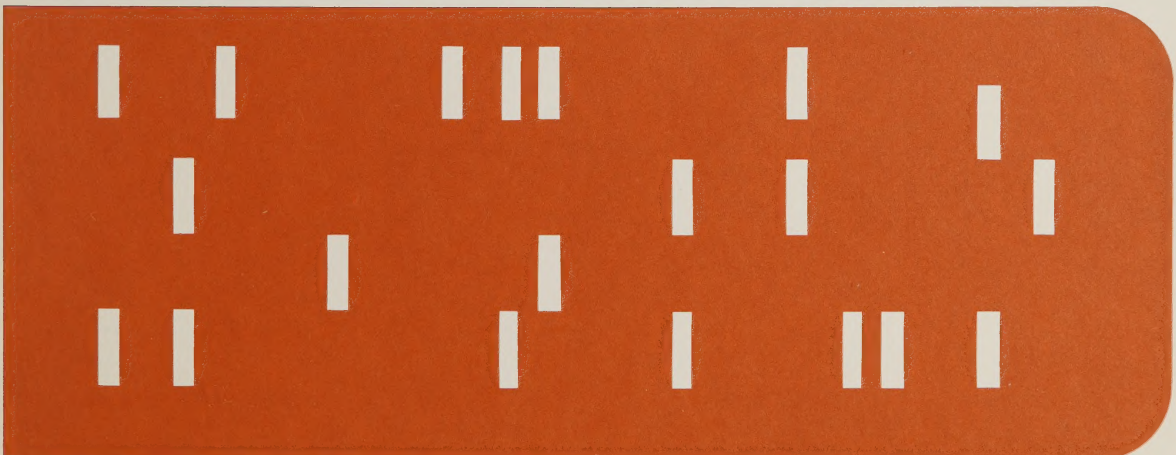
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DOING BUSINESS IN CANADA

FORMS OF BUSINESS ORGANIZATION



DEPARTMENT OF INDUSTRY, TRADE AND COMMERCE
OTTAWA, CANADA

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FORMS OF BUSINESS ORGANIZATION

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FOREWORD

Information in this booklet deals with federal and provincial legislation affecting the form and commencement of business in this country. It is intended as a guide in this field of legislation and, as such, refers only to the basic principles involved.

Since the law contains a considerable amount of detail, it is suggested that an enquirer consult with relevant authorities or solicitors of his choice when seeking precise and detailed guidance. Specific information on federal requirements can be obtained from the Corporations Branch, Department of Consumer and Corporate Affairs, Ottawa. Appropriate provincial authorities are listed in Appendix "A" to this booklet.

Other publications available from the complete series of "Doing Business in Canada" are:

- The Business Environment
- Canadian Customs Duties
- Taxation — Income, Business, Property
- Taxation — Sales, Excise, Commodity
- Labour Legislation
- Construction and Equipment Standards
- Federal Incentives to Industry
- Patents, Trade Marks, Industrial Designs and Copyrights
- Tariff Preferences for Canadian Goods Abroad
- Also available:
- Financing Canadian Industries



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SOLE PROPRIETORSHIP

A business operated under sole proprietorship comes under provincial or territorial jurisdiction and most of the regulations are practically identical in nature and scope.

It may be generally stated that, in Canada, those who are capable of entering into a binding agreement are capable of engaging in any lawful business activity they choose. They are, of course, bound by general legal principles governing persons, property and obligations, but apart from that there are no other legal requirements with which they must comply when operating as a sole proprietorship.

Practically every business, large or small, is affected by some form of governmental licensing control. Sole proprietorships, partnerships and corporate or other forms of business organi-

zation are equally affected. Accordingly, most of the "control" requirements outlined in the section on Partnership can apply to a sole proprietorship.

Any individual who desires to use some distinctive name other than his own, or to add "and company" or similar words to his own, must file a declaration in the same place and within the same time, as indicated in the following section dealing with the registration of partnerships.

Generally speaking, declarations must state the full name and residence of the person involved, the name under which he intends to carry on business, that no other person is in partnership with him, and that he is 21 years of age. If under 21, the date of birth must be shown.

PARTNERSHIP

Partnerships come under provincial or territorial jurisdiction and most of the regulations are practically identical in nature and scope.

A partnership is an arrangement whereby two or more persons combine some or all of their resources, skill or industry, in a business undertaking, with a view to making profit to be shared by all members of the partnership. The relationship existing between members of an incorporated company or association is not a partnership in the legal meaning of the word.

The most common forms of partnership are general partnership and limited partnership. Each has the same powers, but differs in formation, registration (in some instances), and the individual liability of the members to one another and to the public. In some of the provinces, the Partnership Act makes no distinction between general and limited partnerships, but in practice, however, partnerships may fall under one or the other class.

There are no general restrictions with regard to a firm's name other than in cases where the name does not comprise the actual names of the partners. In such cases, it must not be the same as that of any other registered firm or so similar as to cause confusion. The use of "and Co." and "and Company" is permissible. The words "limited", "incorporated" or their abbreviations cannot be used. In Quebec, all documents issued in the course of business

must bear the word "registered" or the abbreviation thereof.

It is customary for the partners to sign an agreement covering such matters as purpose of business, name of firm, duration of agreement, place of business, capital to be contributed by each partner, division of profits and losses, rights of management, and procedure for termination or re-organization of the partnership.

Apart from such agreement, dictated by self-interest and sound business practice, there is also a statutory requirement with which a partnership must comply. Provincial and territorial laws require that partnerships must be registered with the proper authorities.

There are no other general requirements with which a partnership must conform. However, consideration must be given to licences or permits that may be required by any of the three levels of government in connection with the operation of a particular type of business. Where a particular type of business is subject to regulatory or revenue-protecting control, only one licence is usually required, rather than one for each member of the partnership.

General Partnership

In a 'general partnership', the members are not only jointly liable (liable in equal shares) for the debts of the partnership, but in addition are jointly and severally liable (each member liable

for the full amount). Each partner can bind the partnership irrespective of the consent of the other partner(s).

Registration usually consists of filing a declaration signed by all partners, stating the name in full and residence of each, the firm name under which the business is to be carried on, and the time during which the partnership has existed. The declaration must also include an averment that the parties named are the acknowledged partners.

In Alberta, the declaration must be filed in the local Registry Office within six months after formation.

In British Columbia, the declaration must be filed with the Registrar of Companies and such declaration should be filed within three months after formation of the firm.

In Manitoba, the declaration must be filed with the Companies Branch, Department of Consumer, Corporate and Internal Services in Winnipeg.

In New Brunswick, the declaration must be filed with the Registry Office for the county in which the principal place of business is to be located. Registration must be effected before the commencement of business.

In Nova Scotia, the declaration must be filed with the Registrar of Joint Stock Companies before beginning to carry on business.

In Ontario, the declaration must be filed with the Registrar of the Registry Division in which the business is to be carried on.

In Prince Edward Island, the declaration must be filed with the Department of the Provincial Secretary in Charlottetown.

In Quebec, the declaration must be filed with the Prothonotary of the Superior Court in each district in which the partnership proposes to carry on business.

In Saskatchewan, the declaration must be filed with the office of the Provincial Secretary within two months after the formation of the partnership.

In the Yukon and the Northwest Territories, the declaration must be filed in the office of the

registration clerk of the registration district in which the business is to be carried on.

Partnerships are liable to a fine should they fail to register as prescribed. In Nova Scotia and Ontario, there is an additional penalty in that such partnerships are precluded from resorting to the courts to enforce contracts made in the normal course of business.

Limited Partnership

A 'limited partnership' is composed of one or more general partners who conduct the business, and one or more persons who contribute an amount in actual cash called special or limited partners.

As opposed to the unqualified liability of a general partner, a limited partner is normally liable to the firm or its creditors only to the extent of the capital he has agreed to contribute, and no more. He may share in profits according to the partnership agreement, but must take no part in the management of the firm, or he becomes a general partner.

Parties to a limited partnership must sign a declaration stating, usually, the name under which the business is to be carried on; the general nature of the business; the names of all general and special partners, indicating which are the former and which are the latter; the residence of each partner; the amount of capital each limited partner has contributed; the date when the partnership is to commence and terminate; and the principal place of business of the partnership. The declaration must be signed before a notary public.

The place of filing the declaration, in all provinces and the two Territories other than Alberta and Saskatchewan, is the same as for general partnerships. In Alberta, it must be filed with the Supreme Court for the judicial district in which the principal place of business is to be. In Saskatchewan and Manitoba the declaration must be filed in the office of the Provincial Secretary.

CORPORATE FORMS OF BUSINESS ORGANIZATION

In Canada, there are 11 general Companies Acts, one for incorporation under federal law and one each for incorporation under provincial law. There is also a Companies Ordinance in the Yukon Territory which provides for the incor-

poration of a limited liability company established for the purpose of doing business within the territory and also for the registration of extra-provincial companies. Extra-territorial companies, including federally incorporated

companies, wishing to carry on business in the Northwest Territories, should get in touch with the Registrar of Companies, Yellowknife, NWT.

Most companies are incorporated under the authority of a general Companies Act. Only a few are created by Special Act of the Parliament of Canada or of the Legislature of any one of the provinces. The creating of a corporate entity by Special Act is restricted mainly to insurance companies, banks, loan companies, trust companies and railways. Since the creation of such companies is of limited interest only, the following will not touch upon the procedure and legislation under which they are organized.

It might be mentioned also that the creation of corporations for social, literary, or similar

purposes embraces a slightly different procedure in most instances. Since this type of organization is not usually formed for purposes of gain, it is considered that further comment is not required.

A corporate form of business organization is the most complex and the most expensive to organize, but nevertheless the most satisfactory. The services of a lawyer are usually retained for the preparation of the necessary legal forms and for advice on a wealth of matters relating to formation, internal conduct, and external relations.

PUBLIC AND PRIVATE COMPANIES

In most instances, either a private or public company may be created under provincial laws. The distinction remains, however, in provincial law in respect of surveillance of the securities market.

A private company is one that contains in its charter the following clauses: (a) a restriction on the right to transfer shares, (b) a provision whereby the number of shareholders is limited to 50, and (c) a prohibition from offering securities for public subscription. Public companies are those that do not have such clauses in their charter and are therefore not subject to these three restrictions.

Specific provision for the creation of a private company is not to be found in the Com-

panies Act in Newfoundland, Nova Scotia, Prince Edward Island, Quebec, Ontario, or British Columbia. However, all of these provinces allow the passing of a company by-law having the same restrictive effect with regard to the transferability of shares. (There is no federal income tax advantage to be realized in operating as a private company.) Under the British Columbia Companies Act there are only reporting and non-reporting companies and no longer are companies referred to as public and private.

Under federal law, the distinction between private and public companies does not exist. The concept has been replaced by whether or not a corporation has publicly distributed its securities.

PROSPECTUS

A prospectus does not have to be filed under the Canada Business Corporations Act except in the case of a corporation that files or distributes in any jurisdiction a prospectus, statement of material facts, registration statement, securities exchange take-over bid circular or similar document relating to the distribution to the public of a corporation's securities, in which case the corporation is required to send to the Director of the Corporations Branch a copy of any such document. However, full financial information

is required of companies which have distributed their securities to the public, as well as from non-distributing companies that have assets in excess of \$5 million and annual sales in excess of \$10 million. In arriving at these figures, the assets and sales of affiliates must be included. Full financial information must also be submitted to the Department of Consumer and Corporate Affairs at the time of a take-over bid.

INCORPORATION UNDER FEDERAL LAW

The Canada Business Corporations Act is the general statute whereby companies are incorporated under federal law. The administering body is the Corporations Branch, Department of Consumer and Corporate Affairs, Ottawa.

Under the Act, any persons whether individuals or corporations may file articles of incorporation and receive a certificate of incorporation for any legal purpose except for conducting such business as an insurance, loan or trust company and the business of banking and the issue of paper money. One or more bodies corporate may "incorporate a corporation". The Act does not provide for any objects to be set out in the articles of incorporation. However, the articles may set out any restrictions on the business that the corporation may conduct.

The documents that must be completed and forwarded to the Director of Corporations are the Articles of Incorporation, a Notice of Registered Office, a Notice of Directors and a statutory declaration of one of the applicants. A copy of the Act may be purchased from Information Canada, 171 Slater Street, Ottawa, K1A 0S9.

Filing of Articles of Incorporation

Signators must be persons of the full age of 18 years. The articles must contain (a) the proposed company name; (b) restrictions, if any, on the types of business that the company may carry on; (c) the location in Canada of its registered office; (d) details as to capital stock; (e) the names in full, addresses, and callings of the signators who are to be the first or provisional directors. For further information on the incorporation procedure, it would be advisable for persons or companies contemplating incorporation in Canada, prior to drafting the articles of incorporation, to contact the Director, Corporations Branch, Department of Consumer and Corporate Affairs, Place du Portage, Ottawa-Hull, Canada, K1A 0C9.

At the time of filing, the Articles of Incorporation must be accompanied by a Notice of Registered Office and a Notice of Directors.

The corporate name must convey the information that the firm has the protection of limited liability for its members. It is required that the words "Limited", "Incorporated" or "Corporation" or the abbreviations "Ltd.", "Inc." or "Corp." be the last word of the com-

pany's name. Names liable to conflict with that of any other existing business organization, whether incorporated or not, are not acceptable. The Corporations Branch has a listing of all companies incorporated in Canada and, in some instances, information regarding the trade names under which partnerships carry on business. The Branch may also refuse to accept the choice on grounds that it is otherwise objectionable, such as phraseology that tends to be misleading with regard to the nature of the business.

(Canada) may be included in the corporation's name when the entity is a subsidiary of a concern of an identical name organized under the laws of a foreign country, or of a province. The use of (Canada) is not permitted under other circumstances, although the words "Canada", "of Canada" or "Canadian" may be used without brackets if there is no connotation of federal government participation.

It is permissible for a company to have a bilingual name, i.e. a name in an English and a French form. The practice is to separate the English and French forms with a hyphen, as for example "XYZ OF CANADA LIMITED-XYZ DU CANADA LIMITEE". When the letters patent or supplementary letters patent so provide the company may use (1) only the English form of its name (2) only the French form, and (3) both at the same time.

A federal company must have its registered office in Canada. The company's books, recording the charter, by-laws, shareholders, and directors, must be kept at such location or, in certain circumstances, at the office of its transfer agent. Other offices can be established elsewhere, of course.

Under the Act, a company may have either a finite or infinite number of shares of one or more classes. When there is more than one class, at least one must have full voting rights. All shares must be without par value. The charge for incorporation is a flat fee of \$200 in all cases.

Under Section 183 of the Act, subject to the articles of incorporation, the by-laws or any unanimous shareholders agreement, the directors may borrow money upon the credit of the corporation, issue debt obligations, and mortgage, pledge, etc., all or any property of the corporation.

There are no regulations in the Canada Business Corporations Act with regard to the beneficial ownership of the shares or debentures of a company incorporated by certificate of incorporation under the Canada Business Corporations Act. Ten, fifty, or one hundred per cent of the issued capital of such company can be held in any country or by persons of any nationality or residence, and the company in question comes under no disability whatsoever. (There are exceptions in connection with commercial aviation, fishing, coastal shipping and broadcasting companies. The requirements with regard to share ownership in these cases have been laid down either in specific legislation, or have been developed in the course of administrative practice. There is no connection between such restrictive measures and the Canada Business Corporations Act.)

Directors

The Notice of Directors, accompanying Articles of Incorporation, name the first or provisional directors. They are charged with the organization and management of the company until the first general meeting of shareholders and the election of a board of permanent directors. The meeting at which directors are to be elected must take place in Canada, and their residence addresses must be indicated in the above notice.

The qualifications of directors are set out in the governing Act, the articles of incorporation and the by-laws of the company. There are residence requirements with which directors must comply. A majority of directors must be resident

Canadians. A resident Canadian is defined as an individual who is

- (a) a Canadian citizen ordinarily resident in Canada,
- (b) a Canadian citizen not ordinarily resident in Canada who is a member of a prescribed class of persons, or
- (c) a landed immigrant within the meaning of the Immigration Act and ordinarily resident in Canada. However, such a landed immigrant who has not applied for Canadian citizenship after one year from when he became eligible to so apply, is not deemed to be a resident Canadian.

A unique feature of the Act is the unanimous shareholders agreement. This permits the shareholders of a company, by a unanimous lawful written agreement among all shareholders, to restrict in whole or in part the powers of the directors. A shareholder who is a party to a unanimous shareholders agreement has all the rights, powers and duties of a director to the extent that the agreement restricts the discretion or powers of the directors and the directors are thereby relieved of their duties and liabilities to the same extent.

Commencement of Business

A certificate of incorporation is only issued after receipt and approval by the Department of the articles of incorporation. A federal company is deemed to be in existence on the date of its certificate of incorporation and can commence operations as of that date.

INCORPORATION UNDER PROVINCIAL LAW

The Companies Acts of the provinces vary according to history and local requirements, although in the main they are comparable to the general legislation under which federal companies are incorporated.

The following text has been prepared to point up some of the salient differences, although repetition has been practised where some of the more important features are involved. Where no particular reference is made to a point appearing to be of interest, it should be considered that provincial law follows the federal Act very closely. Despite the similarity, however, it is advisable to retain competent

legal counsel qualified to practise before the Bar of the province in which it is proposed to incorporate the company.

As with federal law, a company can be created either by a special act of the Legislature or under the Companies Act of the province in question. In general, a special act of the legislature is required only for the creation of a company engaged in the construction or operation of a railway, or carrying on the business of a trust and loan company.

A company incorporated under provincial law usually has its head office in the province of incorporation, and annual meetings must nor-

mally be held within the province unless special permission is obtained to do otherwise.

Share capital may be held by anyone, either in Canada or a foreign country (with qualifications regarding the ownership of shares in commercial airline, fishing and coastal shipping companies).

Incorporation fees vary from province to province and the tariff of fees can be obtained from the provincial authorities listed in Appendix "A".

LETTERS PATENT SYSTEM

The Letters Patent System of incorporation is used in the Provinces of Manitoba, New Brunswick, Ontario, Prince Edward Island and Quebec. The requirements, provisions and documents to be completed are largely similar to those under the federal Act. (Refer to Page B7, Incorporation under Federal Law).

The Acts of these five provinces require that the board of directors consist of not less than three members. There are no residence requirements for directors, but each must hold at least one share in the company.

REGISTRATION SYSTEM

The Registration System of incorporating companies is followed in Alberta, British Columbia, Newfoundland, Nova Scotia, Saskatchewan and the Yukon Territory.

Under this system, the type of incorporation which may be effected varies in each of these jurisdictions. However, in general, there are three classes of corporation that may be created — a company limited by shares, a company limited by guarantee and a company with unlimited liability. Under each one of these classes the shareholders are subject to varying degrees of liability.

In a company limited by shares, the liability of each shareholder is limited to the unpaid portion of the shares for which he has subscribed. In a company limited by guarantee, the liability of each member is limited to the amount he has agreed to contribute to the assets of the company in the event of insolvency and winding-up. In a company with unlimited liability, there is no limit placed on the liability of members.

In general, three or more applicants may form an incorporated company.

Insofar as documentation is concerned, the applicants for incorporation are normally required to sign only a Memorandum of Association. When filed and approved by the provincial registrar concerned, the Memorandum of Association becomes the charter of the company.

Generally speaking, the Memorandum of Association sets out such information as the name of the company, the location of its head office, the objects for which the company is formed, provides detail regarding authorized capital and the shares which the subscribers to the Memorandum agree to take; and, stipulates the nature of the shareholder's liability.

The governing Acts usually provide for the adoption and filing of a set of regulations and rules, known as Articles of Association. Such articles are analogous to by-laws (letters patent system) in that they regulate the internal management of the company in question, but unlike in that they must be filed with the administering office and consequently are deemed to be public knowledge. An appendix to each Act contains a model of articles, and it is usually provided that, except where modified or specifically excluded, such model constitutes the articles of the company being formed.

Alberta

The Alberta Companies Act makes no provision for the incorporation of companies with unlimited liability.

No organization consisting of more than 20 persons can carry on business for purposes of gain unless incorporated as a company, or unless working under some other legislation.

The location of the head office of the com-

pany is not to be included in the Memorandum of Association. A separate Notice of Registered or Head Office must be filed with the Memorandum.

British Columbia

Under the British Columbia Companies Act, all companies have a share capital with limited liability. There is no provision for incorporating a company limited by guarantee or with unlimited liability. Mining companies may be incorporated with specially limited liability, but are then required to have (Non-Personal Liability) or (N.P.L.) after their corporate title.

At least one of the directors must be ordinarily a resident of the province. The majority of

directors of every company shall be persons ordinarily resident in Canada. Subject to the Act, one or more individuals may form a company.

Newfoundland

No domestic, dominion or foreign company having gain for its object shall commence business in Newfoundland until it is registered under the Companies Act, Chapter 54 of the Revised Statutes of Newfoundland 1970.

Saskatchewan

Saskatchewan requires that at least one director reside in the province.

An organization must be incorporated if it consists of more than 20 persons in business for profit.

COMMENCEMENT OF BUSINESS

The **Letters Patent** (in Manitoba, New Brunswick, Ontario, Prince Edward Island and Quebec) or the *Certificate of Incorporation* (in Alberta, British Columbia, Newfoundland, Nova Scotia, Saskatchewan and the Yukon Territory) are conclusive evidence that the formal preliminaries have been complied with and that the company is duly incorporated. However, they indicate only that the statutory requirements have been fulfilled and that the prescribed fees have been paid; in most provinces there are still other formalities to comply with before a company can obtain authority to commence business operations. Some of the more important formalities for respective provinces are as follows:

Alberta

Companies are required to file with the Registrar of Companies, within 15 days of issue, an identical copy of the prospectus which has been approved by the Alberta Securities Commission. Once this document has been filed, they are in business.

British Columbia

Both reporting and non-reporting companies may carry on business on issue of the Certificate of Incorporation. There is no need of a further certificate to commence business. However, for a reporting company to sell its shares, debentures or any other securities to the public, registration must be obtained under the

Securities Act and a prospectus must be filed with the Securities Commission.

Newfoundland

A statutory declaration by a solicitor engaged in the formation of a company indicating compliance with all the requirements of the Companies Act in respect of registration must be filed with the Registrar at the time of the filing of the Memorandum and Articles of Association (if any). However, as soon as its certificate of incorporation is issued a company may carry on business.

Nova Scotia

All companies, whether private or public and no matter where they are incorporated, must register under the Domestic, Dominion and Foreign Corporations Act to carry on business in the province.

Prince Edward Island

Capital stock to an amount not less than \$2,500 must be subscribed before letters patent are granted.

Saskatchewan

A public company must obtain a certificate entitling it to commence business after it is incorporated. Such a certificate can be obtained by filing a prospectus or a "Statement in lieu of Prospectus" with the Registrar of Joint Stock Companies within seven days of issue.

EXTRA-PROVINCIAL COMPANIES

All provinces require that foreign or extra-provincial companies be registered or hold a licence when "carrying on business" in their respective areas. Their individual requirements differ slightly, but it may be generally stated that each has legislation or regulations of one sort or another with which a foreign or extra-provincial company must comply.

The definition of 'foreign' or 'extra-provincial' company usually includes all companies other than those incorporated under statute of the province in question. Banking, railway, insurance, trust and loan companies are sometimes excepted. In the provinces of Ontario and Quebec, licensing provisions are inoperative insofar as federal companies and companies incorporated in either of the two provinces are concerned. In all other provinces, federal companies are considered as extra-provincial companies for purposes of registration or licensing.

A company incorporated under the laws of another country is under no obligation to incorporate a subsidiary in this country providing it complies with provincial registration or licensing requirements.

Registration is effected by filing a statement and specified documents with the provincial authorities concerned. In general, the statement must include the corporation name; when, where and under what special or general act it was incorporated; where its head office is located; the nature of the business carried on; the address of the principal place of business in the province in question, and, the date on which business was or is to be commenced. All the provinces do not require the same information, and complete details as to format and content in each can be obtained from the pertinent provincial office. (See Appendix "A").

In addition to such sworn statement, a copy of the charter and regulations of the company must normally be filed. In most instances, a power of attorney must be recorded empowering a resident of the province, among other things, to carry out contracts and accept service of process in all suits and proceedings by or against the company within the province.

As a general rule, the contracts made by a non-registered extra-provincial corporation, in the course of or in connection with business carried on in a specific province, are not void but only unenforceable. Non-registered extra-provincial companies cannot maintain action or other proceedings in any court in the province. Such disability does not apply to federal companies. However, in most provinces, federal companies, like any other non-registered extra-provincial company, suffer from a disability with regard to acquiring or holding land in the province.

In addition, a heavy fine is usually imposed upon the company and upon its officers and agents where a company carried on business without being registered or licensed, as the case may be. The fine, heavy enough in the first instance, is cumulative.

In most provinces, the schedule of fees for registration or licensing are related to the capital employed in the province, subject usually to a minimum charge in some cases, and a maximum charge in other cases. Methods followed by the various provinces differ in determining the amount of capital employed in their respective areas.

Details of the registration requirements for extra-provincial companies, including schedules of fees, are available from the appropriate provincial authorities. (See Appendix "A").

FEDERAL OR PROVINCIAL INCORPORATION

A company created by federal authority has the capacity and status to carry on business in all parts of Canada. The powers conferred by federal statute cannot be limited by legislative action on the part of provincial governments nor circumscribed by administrative action on the

part of provincial officials, unless such administrative or legislative action applies to all companies.

While the powers and status of a federal company cannot be restricted nor curtailed by discriminatory legislation on the part of provin-

cial authorities, it must be mentioned that such powers are exercisable only within the general framework of provincial law. Even though the status of any particular company cannot be adversely affected, federal companies as a group are required to comply with provincial laws of general application. Their position, under general legislation enacted by provincial governments, is the same as that of any other company in such matters as taxation, land, licences, annual reports, contracts, etc.

For example, a federal company carrying on business in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Saskatchewan, is required to take out a licence or to register as an "extra-provincial" company under the laws of the province in question. In Prince Edward Island, a federal company must file a declaration with the Provincial Secretary prior to commencing business. A federal company carrying on business in Newfoundland is required to register under the provincial Companies Act and should not commence business in Newfoundland until it is so registered.

A federal company must comply with provincial legislation regarding annual reports as, of course, must all companies carrying on business in the province concerned. In addition, a federal company is also required to file an annual report with federal authorities.

Any company proposing to sell securities must file a prospectus with the relevant authorities in the province or provinces in which the sale is to be undertaken. Federal companies are not exempt, and in addition must file a prospectus with the authorities in Ottawa.

In connection with the licensing of particular types of business operations, a federal company, or any company, is obliged to make application and pay the requisite fee, whether the licence is a feature of federal, provincial or municipal control. All companies are equally liable no matter where incorporated and no matter how long in existence.

In summation, it may be said that a federal company cannot be prevented from exercising the powers that have been validly conferred on it by federal authority. A province cannot prohibit a federal company from doing business within its borders, nor can it prevent such a company from suing in the courts to enforce contracts made in the course of business authorized by its charter. However, each province

can and does require that a federal company comply with legislation of general application. Such legislation of general application will most certainly have an effect on day-to-day operations.

The provinces derive their powers to incorporate companies from a provision in the British North America Act stating that provincial legislatures may exclusively make laws with regard to the incorporation of companies having provincial objects. While it might appear that provincial legislatures have an authority that is clear-cut and all-inclusive, although limited insofar as the sphere of jurisdiction is concerned, subsequent rulings of the courts have served to qualify the position.

One of the more important modifications refers to the exclusive position of the provinces, and is centred around the difficulty of accurately defining the phrase 'provincial objects'. It has now become accepted that there is no derogation from that status or capacity of a federal company where that company confines the exercise of its powers to one province only, as against the two or more provinces in which it has the right and capacity to exercise its powers. A company incorporated under federal authority can operate solely within one province without invalidating the charter by which it was incorporated.

A second qualification refers to the powers of provincially incorporated companies to carry on business beyond the province of incorporation. While the actual powers and rights which a provincial legislature can bestow are limited to those exercisable within the province, the incorporation authority is not precluded from conferring capacity to accept extra-provincial powers and rights. Companies incorporated under provincial jurisdiction do not have, in their own right, a status enabling them to exercise their powers in any other province; they obtain such status only where it is granted by the other province, and, of course, become eligible only when they comply with requirements. The rights of a provincially incorporated company to carry on business in another province are made available solely at the discretion of that other province. As a consequence, such company could find that the powers granted to it by its document of incorporation might be circumscribed insofar as its operations in a second province are concerned.

It may be generally stated that a provincial company must register or take out a licence in each of the provinces in which it proposes to carry on business. One important exception is the reciprocal arrangement between the provinces of Ontario and Quebec whereby licensing requirements are inoperative insofar as companies incorporated in the other province are concerned. Such reciprocal exemption does not apply to companies merely licensed to do business; only companies that have been incorporated under laws of one or other province are entitled to such relief.

A provincial charter is usually preferable for a company intending to restrict its activities to one province. The instrument of incorporation is drawn up in the light of laws of that

province and the company is responsible to one authority only. Duplication in the matter of filing prospectuses and reports is eliminated. Furthermore, the power to hold land or to begin business operations as a corporate entity is obtained without recourse to two different legislative bodies.

However, where an operation in more than one province is contemplated it is usually found advisable to incorporate under federal authority. Incorporation under federal statute ensures that a company can exercise the same powers in all provinces. Any one province or all provinces cannot by discriminatory legislation restrict the powers that have been validly conferred by federal statute.

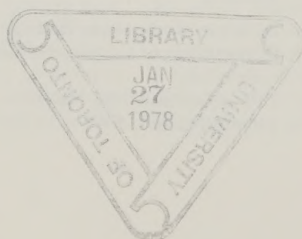
APPENDIX "A"

ADDITIONAL INFORMATION

Additional information including copies of the respective Acts, schedules of fees, together with instructions regarding departmental requirements, may be obtained from the following authorities:

FEDERAL	— Director Corporations Branch Department of Consumer and Corporate Affairs Ottawa/Hull, K1A 0C9
Alberta	— Registrar of Companies, Companies Branch Department of Consumer and Corporate Affairs Century Place 9803-102A Avenue Edmonton, T5J 3A3
British Columbia	— Registrar of Companies Corporate and Financial Services Division Attorney General's Department Burdett Avenue Victoria
Manitoba	— Director, Companies Branch Department of Consumer, Corporate and Internal Services 210 Osborne Street North Winnipeg, R3C 0V8

New Brunswick	— Deputy Provincial Secretary Department of Provincial Secretary Fredericton, E3B 5H1
Newfoundland	— Assistant Deputy Attorney General, Registrar of Deeds and Companies Department of Justice Confederation Building St. John's
Nova Scotia	— Registrar of Joint Stock Companies Department of Provincial Secretary 1723 Hollis Street (P.O. Box 998) Halifax, B3J 2X3
Ontario	— Companies Division Ministry of Consumer and Commercial Relations 555 Yonge Street Toronto, M4Y 1Y7
Prince Edward Island	— Deputy Provincial Secretary Department of Provincial Secretary P.O. Box 2000 Charlottetown
Quebec	— Directeur Service des Compagnies Ministère des Consommateurs, Coopératives et Institutions financières 800 Carré d'Youville Québec, G1A 1L7
Saskatchewan	— Registrar of Joint Stock Companies Department of Provincial Secretary Legislative Building Regina, S4S 0B3
Yukon Territory	— Registrar of Joint Stock Companies Government of the Yukon Territory P.O. Box 2703 Whitehorse, Y.T. Y1A 2C6
Northwest Territories	— Registrar of Companies Government of the Northwest Territories Yellowknife, NWT



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